

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JUDAH AUSUBEL,

Plaintiff,

-against-

GREAT WEST LIFE AND ANNUITY  
INSURANCE COMPANY,

Defendant.  
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**ORDER**  
CV 05-2823 (TCP)(ARL)

**LINDSAY, Magistrate Judge:**

By letter dated July 25, 2006, defendant moves to compel discovery. More specifically, the defendant explains that the plaintiff has not provided automatic disclosures nor did the plaintiff appear for his deposition noticed for June 26, 2006 despite telephone messages left with his counsel, Daniel Lindenfeld, on June 16 and June 25<sup>th</sup>. Accordingly, the defendant seeks an order compelling the plaintiff to provide Rule 26(a)(1) disclosures and to appear for deposition. Defendant also seeks an extension of the discovery deadline, which expired on July 27, 2006, and the deadline to commence dispositive motion practice. Alternatively, the defendant seeks an order dismissing the plaintiff's complaint pursuant to Federal Rules 37(b)(2)(c) and 41(b) for failure to prosecute. The plaintiff has not responded to the application. The application is granted in part.

The plaintiff is directed to provide automatic disclosures forthwith and to appear for deposition at a date and time to be agreed upon by the parties but in no event not later than September 12, 2006. Plaintiff is cautioned that his failure to provide Rule 26(a)(1) disclosures and/or to appear for deposition will lead to a recommendation to District Judge Platt that the case be dismissed. Accordingly, the pre-trial scheduling order is modified as follows:

**November 15, 2006:** All discovery, inclusive of expert discovery, to be concluded.

**November 20, 2006:** Any party planning on making a dispositive motion shall take the first step in the motion process by this date or risk forfeiting the right to make such a motion. The parties are directed to consult the individual rules of District Judge Platt in this regard.

**November 28, 2006:** Final conference before the undersigned at 11:30 a.m. The proposed joint pretrial order shall be electronically filed in advance of the final conference.

Finally, the defendant's request for sanctions and for reimbursement of costs and attorneys' fees is denied. The clerk is directed to serve a copy of this order on the plaintiff.

Dated: Central Islip, New York  
August 9, 2006

**SO ORDERED:**

/s/  
ARLENE ROSARIO LINDSAY  
United States Magistrate Judge